the admissibility of evidence is not taken at the trial were enunciated by Viscount Simon L.C. in *Stirland* v. *Director of Public Prosecution*[1] at p.328 and it is unnecessary for me to restate them.

There is one further matter to which I think I should refer and that is the statement in the learned District Judge's grounds of decision that he completely disregarded the unwarranted and groundless attempt by the prosecution to introduce unfavourable evidence of the record of the accused. This must, I think, clearly refer to the accused's brother Jamal Mohamed and not the accused.

That this is so is borne out by a reference to the evidence. In re-examination Mohamed Haneefa one of the complainants was asked the following question by Counsel for the prosecution—

> Q. Do you know Jamal Mohamed has a record for violence?
>
> A. I heard.

Again in answer to a question by the Court the same witness said, "People talk about it for what it is worth—Jamal Mohamed being in jail. I am unable to give details."

Subsequently there appears a note by the learned District Judge "Marshall (prosecuting Counsel) informs Court that he is now instructed that Jamal Mohamed has not been to prison for an offence of violence or for any offence."

It is beyond doubt, so it seems to me, that this is the matter to which the learned District Judge was referring.

For these reasons, in my judgment, the appeal must be dismissed and the convictions and sentences affirmed.

Appeal dismissed.

MUNIANDY v. TAN LIAN HOCK & ORS.

[O.C.J. (Suffian J.) May 11, 1963]

[Alor Star — Kedah Civil Suit No. 18 of 1962]

Road accident—Lorry knocking station wagon which in turn knocked into bullock cart—Injury to driver of bullock cart—Bullock cart driver suing drivers and owners of lorry and station wagon—Whether reasonable —Payment into court by driver and owner of lorry.

Practice and Procedure—Costs—Whether costs of successful party should be borne by unsuccessful party —Test to be applied—Payment direct to successful party —Exercise of discretion by Court.

Practice and Procedure—R.S.C., 1957 O.22 r.4(1) & (3), and O.52 r.1—Whether procedure adopted by plaintiff correct—Whether application can be made by way of motion in open Court—Costs to be not more than costs of summons-in-chambers unless good reason exists —Meaning "of the Court or a Judge" in O.22 r.4(3).

The plaintiff, a bullock cart driver, was injured when a lorry knocked into a station wagon which in turn knocked into the bullock cart. The first and second defendants were the driver and owner respectively of the lorry. The third and fourth defendants were the driver and owner respectively of the station wagon. The plaintiff alleged that both the first and third defendants were negligent. The first and second defendants paid $3,500 into Court under O.22 r.4(1) and the plaintiff elected to accept that sum whereupon all further proceedings were stayed. The plaintiff then filed notice of motion under O.22 r.4(3) praying *inter alia* that any costs awarded to the third and fourth defendants be paid direct by the first and second defendants. It was contended by counsel for the defendants that (i) the plaintiff should not have sued the third and fourth defendants at all and that the first and second defendants should not be made to pay their costs, (ii) the plaintiff should have applied by summons-in-chambers and not by motion, and that if the plaintiff obtained costs of this application it should not be more than the costs of a summons-in-chambers.

Held: (1) it was reasonable for the plaintiff to have joined the four defendants because apart from blaming the plaintiff for the collision the defendants blamed each other;

(2) it was reasonable to order that the costs of the successful third and fourth defendants should be borne by the unsuccessful first and second defendants and that in this case the costs should be paid direct to them. The test as stated by Vaughan Williams L.J. in *Besterman* v. *British Motor Cab Co. Ltd.*[1] applied;

(3) under O.22 r.4(3) the application may be made by way of motion in open court or by summons to a judge in chambers, but where the plaintiff proceeds by way of motion, as in this case, the judge in exercising his discretion as to costs will not ordinarily allow more than the costs of a summons-in-chambers unless there was some good reason for the hearing to be in open court rather than in chambers. As there was no good reason in this case the unsuccessful first and second defendants should pay costs as if the application had been made by summons-in-chambers. *M. Lee* v. *R. C. H. Lim & Co.*[2] followed in the interpretation of the words "of the Court or a Judge" in O.22 r.4(3).

Cases referred to:—

(1) *Besterman* v. *British Motor Cab Co. Ltd.* [1914] 3 K.B. 181 at p. 187.

(2) *M. Lee* v. *R. C. H. Lim & Co.* [1957] M.L.J. 190.

The following cases were also cited in argument: *Sanderson* v. *Blyth Theatre Co.* [1903] 2 K.B. 533; *Bullock* v. *The London General Omnibus Co. & Ors.* [1907] 1 K.B. 264; *Southey-Roberts Estates Ltd.* v. *Roe* [1956] 2 All E.R. 829; *Parks* v. *Knowles & Anor.* [1957] 3 All E.R. 600; *P. Odernamall & Co.* v. *American President Lines Ltd. & Anor.* [1956] M.L.J. 11.

CIVIL SUIT.

Triptipal Singh for the plaintiff.

T. Subbiah for the 1st and 2nd defendants.

Tan Lye Huat for the 3rd and 4th defendants.

Cur Adv. Vult.

Suffian J.: In this case the plaintiff, a bullock cart driver, was injured when the bullock

cart in which he was travelling was knocked into from behind by a station wagon driven by the third defendant and "owned" by the fourth defendant. He sued not only the third and fourth defendants but also the first defendant and the second defendant. The plaintiff alleged that a lorry driven by the first defendant and owned by the second defendant had knocked into the station wagon from behind thus causing the station wagon to knock into the plaintiff's bullock cart. The plaintiff alleged that both the first and third defendants had been negligent.

The first and second defendants paid $3,500 into Court under Order 22 rule 4(1) and the plaintiff elected to accept that sum whereupon all further proceedings were stayed, para (3) of the same rule.

The plaintiff filed notice of motion under Order 22 rule 4(3) for orders summarised as follows:—

(1) That the sum paid into Court by the first and second defendants in satisfaction of the plaintiff's claim, be paid out to the plaintiff's solicitor;

(2) That the plaintiff's taxed costs be paid by the first and second defendants to the plaintiff's solicitor;

(3) That any costs awarded to the third and fourth defendants be paid direct by the first and second defendants.

Inche Subbiah for the first and second defendants consented to prayer (1). As to prayer (2) he said that the plaintiff should get taxed costs only up to payment in. As to prayer (3) he said that the plaintiff should not have sued the third and fourth defendants at all, the first and second defendants should not be made to pay their costs and if they had to, the plaintiff should pay them first and then recover from the first and second defendants. Finally, he said that the plaintiff should have applied by summons in chambers and not by motion in open Court, and if the plaintiff obtained costs of this application they should be no more than the costs of a summons in chambers.

Inche Tan for the third and fourth defendants supported the application for prayer (3) as well as Inche Triptipal Singh's contention that this application had been properly made by way of motion in open Court.

Prayers (1) and (2) are approved in terms except that the plaintiff shall get costs only up to payment in. As to the costs of this application, see later.

As to prayer (3), I think that it was reasonable of the plaintiff to have joined the four defendants, indeed it would have been foolish of him not to have done so, for each of the drivers (the first and third defendants), apart from blaming the plaintiff for the collision, also blamed each other. This was in their statements of defence. In those circumstances applying the test stated by Vaughan Williams L.J. in *Besterman* v. *British Motor Cab Co. Ltd.*[1] it is reasonable to order that the costs of the successful third and fourth defendants should be borne by the unsuccessful first and second defendants. The test was stated as follows:—

".....if the facts are such that it is reasonable to join them both [there were two defendants in that case] and reasonable to be in a state of uncertainty as to which of the two is the really guilty one, then it is part of the reasonable costs of the action that the costs of the action which you have launched against one of those defendants, and who has succeeded in defending himself, should be borne by the man who is to blame."

In exercise of my discretion I direct that the costs of the successful third and fourth defendants should be paid direct by the unsuccessful first and second defendants to them.

I now deal with the costs of this application.

As to the procedure which should have been adopted when making this application, I do not think that Order 52 rule 1 which reads:—

"Where by these rules any application is authorised to be made to the Court or a Judge, such application if made to a Judge in Court, shall be by motion"

is of any help because of the words underlined.

The relevant provision is para (3) of Rule 4 of Order 22, the material words of which read:—

".....the money [that is the money paid into Court by the plaintiff] shall not be paid out except in pursuance of an order of the Court or a Judge dealing with the whole costs of the action....."

Following *M. Lee* v. *R. C. H. Lim & Co.*[2] (although that was a decision of the Singapore Court of Appeal on the Singapore Order 31 Rule 6), I hold that the words "of the Court or a Judge" in our provision mean that this application may be made by way of motion in open court or by way of summons to a judge in chambers and the plaintiff is therefore entitled to proceed by either method, but where the plaintiff proceeds by way of motion, the judge, in exercising his discretion as to costs, will not ordinarily allow more than the costs of a summons unless there is some good reason for the hearing to be in Court rather than in chambers. I do not think that here there was any good reason for a public hearing, it never having been suggested that there was any need for publicity. The sum sought was not very large and if the application had been made in chambers there can, I think, be no doubt that the order which the plaintiff sought could and would be made by me in chambers. True that in the event the hearing of this application occupied a considerable amount of time but most of it was taken up by arguments on procedure.

Accordingly as regards costs of this application, the unsuccessful first and second defendants shall pay costs as if the application had been made by summons in chambers.

Order accordingly.

Solicitors:—*Triptipal Singh; Natha Singh & Subbiah; Rodyk & Davidson.*

CHOK KOK THONG v. THE MINISTER FOR HOME AFFAIRS & ORS.

[O.Cr.J. (Winslow J.) May 14, 1963]

[Singapore — Habeas Corpus No. 1 of 1963]

Habeas Corpus—Transfer of applicant to proper place of detention—Application for—Criminal Procedure Code (Cap. 132), ss.375, 383, 386.

Preservation of Public Security Ordinance, 1955, s. 3—Detention under—Validity of Order—Habeas Corpus for transfer to proper place of detention—Whether Court can intervene.

This was an application made under section 375 etc. of the Criminal Procedure Code and sought for a declaration that the solitary confinement of the applicant at the Central Police Station lock-up was improper and without any legal justification whatsoever. The applicant also asked for a writ of *habeas corpus* to be issued directing the proper detaining authorities to forthwith effect his removal to a proper place of detention.

Held: (1) the application was misconceived, because it did not comply with the procedure laid down by section 386 of the Criminal Procedure Code;

(2) as the detention Order was made in accordance with the provisions of section 3 of the Preservation of Public Security Ordinance the detention was lawful and cannot be attacked;

(3) there was no evidence to indicate that the applicant's conditions of detention were improper or oppressive as to require intervention by the Courts on an application under section 375 of the Criminal Procedure Code.

HABEAS CORPUS.

T. T. Rajah for the applicant.

Tan Boon Teik (Senior Crown Counsel) for the respondents.

Winslow J.: This application is made under section 375 etc. of the Criminal Procedure Code and asks for a declaration that the solitary confinement of the applicant, Chok Kok Thong, at the Central Police Station lock-up is improper and without any legal justification whatsoever. The applicant also asks for a Writ of *Habeas Corpus* to be issued directing the proper detaining authorities to forthwith effect his removal to a proper place of detention.

In my opinion this application is misconceived. Any application for the transfer of a prisoner from one custody to another must necessarily comply with the procedure laid down in section 386 of the Criminal Procedure Code. On such an application the High Court would be in a position to exercise its discretion under section 383 of that Code.

Mr. T. T. Rajah, Counsel for the applicant, sought to attack the legality of the detention by stating that the applicant was being illegally and improperly detained. I have carefully considered the complaints of illegal and improper detention made on behalf of the applicant and have come to the conclusion that more than sufficient cause has been shown to the contrary.

I see no merit in the contention, somewhat belatedly made, that the detention order made by the Minister for Home Affairs is bad in law. It was made in accordance with the provisions of section 3 of the Preservation of Public Security Ordinance, 1955 and speaks for itself. On the strength of that order, which has been exhibited, the detention is lawful and cannot be attacked. Nor is there any validity in the contention that the removal orders dated 8th March, 1963 and 4th May, 1963 are illegal, improper and not in accordance with the law.

As to the complaints of ill-treatment accorded to the detainee these have been denied and there is no evidence to indicate that his conditions of detention are improper or oppressive or such as to require intervention by the Courts on an application under section 375 of the Criminal Procedure Code inasmuch as I hold that the applicant is in lawful custody and cannot be considered to be improperly detained. Whether he will succeed on the present materials before the Court in any future application under section 383 is a matter for speculation.

The order *nisi* is accordingly discharged.

Order nisi discharged.

SHAIK ALY SAHIB & ORS. v. M. I. & M. CORPORATION & ANOR.

[O.C.J. (Winslow J.) May 17, 1963]

[Singapore — Suit No. 1093 of 1959]

Trade marks—Infringement and passing off—Deceptive resemblance—Essential feature—Idea of a mark—Injunction—Trade Marks Ordinance (Cap. 185), ss.10, 14.

The plaintiffs for more than 20 years manufactured and sold vegetable oil and ghee for cooking purposes in tins bearing a distinctive label comprising a red flower with green leaves against a yellow background enclosed within a red circle. The trade mark was registered in 1952 in class 29 in respect of vegetable oil and ghee for cooking purposes.

In 1959 the defendants commenced selling vegetable oil and ghee for cooking purposes not of the plaintiffs' manufacture or merchandise in tins of similar proportions and weights with labels containing a representation of a red flower with green leaves against a yellow background.